

§ 15A-1467. Claims of innocence; waiver of convicted person's procedural safeguards and privileges; formal inquiry; notification of the crime victim.

(a) A claim of factual innocence for any conviction may be referred to the Commission by any court, a State or local agency, or a claimant's counsel. A claim of factual innocence for convictions of homicide pursuant to Article 6 of Chapter 14 of the General Statutes, robbery pursuant to Article 17 of Chapter 14 of the General Statutes, any offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, and any Class A through E felony may be made directly by the claimant. The Commission shall not consider a claim of factual innocence if the convicted person is deceased. A claimant who received notice pursuant to subsection (c1) of this section and did not make a claim of factual innocence shall be barred from investigation of a claim of factual innocence by the Commission absent a showing of good cause and approval of the Commission Chair. The determination of whether to grant a formal inquiry regarding any other claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the convicted person in which the convicted person waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The waiver under this subsection does not apply to matters unrelated to a convicted person's claim of innocence. The convicted person shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the convicted person, then the convicted person's counsel must be present at the signing of the agreement. If counsel does not represent the convicted person, the Commission Chair shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel by Indigent Defense Services for the purpose of advising on the agreement. If the convicted person has requested a specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration.

(b1) Forensic testing and claimant interviews shall not be conducted by the Commission prior to obtaining a signed agreement from the convicted person.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(c1) Absent a showing of good cause and approval of the Commission chair, if a formal inquiry regarding a claim of factual innocence is granted, the Commission shall use all due diligence to notify each codefendant of the claim that an investigation will be conducted and that if the codefendant wishes to also file a claim, they must do so within 60 days from receipt of the notice or their claim may be barred from future investigation by the Commission.

(c2) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall provide a confidential case status update for each case in formal inquiry to (i) the District Attorney and (ii) the convicted person, or counsel, if any, at least once every six months. If there is no defense counsel, the update shall be provided to the District Attorney, the convicted person, and referring counsel, if any. The case status update shall include a summary of the actions taken since the last update and the results of any forensic testing that has been conducted.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to

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compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming innocence.

(g) If, at any point during an inquiry, the convicted person refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry. (2006-184, s. 1; 2010-171, s. 5; 2012-7, s. 5; 2016-73, s. 3.)